



COMMONWEALTH of VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY

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Robert G. Burnley
Director

Gerard Seeley, Jr.
Piedmont Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
MILES AND WELLS PARTNERSHIP
VWP PERMIT NO. 98-E0559

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and Miles and Wells Partnership for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "Miles and Wells" or the "permittee" means the Miles and Wells Partnership certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. “Wellington Farms” means the 243 acre residential subdivision owned by Miles and Wells Partnership and located in Chesterfield County, east of Chalkley Road, north of Ecoff Avenue, south of Centralia Road, and west of Route 145.
8. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. “Permit” means Virginia Water Protection (VWP) Permit No. 98-E0559.
10. “WEG” means the consulting firm, the Williamsburg Environmental Group, working for Miles and Wells on this project.

SECTION C: Findings of Fact and Conclusions of Law

1. The Wellington Farms subdivision is located in Chesterfield County. The project includes the construction of residential sites, roads, and utility crossings. The cumulative wetland impacts resulting from the construction of this project warranted the issuance of a VWP permit. The Permit was issued to Miles and Wells on March 9, 1999, and expired on March 9, 2004.
2. The Permit allowed impacts to 2.76 acres of non-tidal forested wetlands. (Part I.A.1)
3. The Permit required the compensatory mitigation to consist of creating and preserving 4.10 acres of forested wetlands on site and by restoring and preserving 0.28 acres of State waters as indicated in the conceptual mitigation plan dated November 17, 1998 and revised on December 12, 1998. (Part I.C.1)
4. The Permit required that the construction of the mitigation areas be initiated *prior* to or *concurrent* with wetland impacts. (Part I.C.4)
5. On July 30, 2003, DEQ staff performed a site inspection of the project and determined that construction of the houses and roads had been completed in Sections A and B of the subdivision. This inspection revealed that 0.36-acre of the proposed impacts to wetlands had occurred.
6. On August 15, 2003, DEQ staff conducted a follow-up inspection to obtain additional photos and view the proposed mitigation sites. Inspection of the proposed mitigation sites showed that the compensatory mitigation areas had not been constructed.
7. A file review conducted by DEQ staff on August 14, 2003 and September 2, 2003, revealed further noncompliance with the Permit’s conditions and requirements.

8. A file review revealed that Miles and Wells failed to submit final Plans and Specifications (P&S) to DEQ for review and approval prior to impacting the proposed wetland impacts authorized by the Permit. The July 30, 2003 site inspection revealed that 0.36 acres of impacts to wetlands had occurred. The submittal of final P&S for land clearing activities was due *prior* to impacting the 0.36 acres of State waters (proposed impacts) authorized by the Permit. (Part I.B.1)
9. A file search by DEQ staff revealed that Miles and Wells failed to submit for review and approval a final compensatory mitigation plan. The final mitigation plan was due prior to commencing any proposed activity in the 0.36 acres of proposed wetland impacts authorized by the permit. (Part I.C.2)
10. A file search by DEQ staff revealed that Miles and Wells failed to provide a final copy of the protective instrument to preserve the on-site compensatory wetland mitigation areas due in July 1999. (Part I.C.3)
11. A file search by DEQ staff revealed that Miles and Wells failed to initiate construction of mitigation areas prior to or concurrent with wetland impacts. (Part I.C.4)
12. A file search by DEQ staff revealed that Miles and Wells failed to submit the required construction wetland monitoring reports and photos. (Part I.E.1)
13. A file search by DEQ staff revealed that Miles and Wells failed to provide the 10-day notification letter prior to commencing construction activities. (Part I.E.2)
14. A file search by DEQ staff revealed that Miles and Wells failed to apply for permit reissuance 180 days prior to the permit expiration date. (Part I.E.5)
15. DEQ issued a Notice of Violation (NOV) to Miles and Wells on September 24, 2003, citing the Permit violations, as listed above.
16. On October 14, 2003, a meeting was held with WEG and the U.S. Army Corps of Engineers to discuss resolution of the alleged noncompliance cited in the NOV.
17. On January 5, 2004, DEQ-PRO received a permit application for reissuance of the Permit.
18. The permit application for reissuance includes the proposal to address the issues associated with the failure to create the compensatory mitigation on-site through the purchase of wetland credits from the James River Mitigation Landbank.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Miles and Wells and Miles and Wells voluntarily agree, to perform the actions described in Appendix A of this Order. In addition, the Board orders Miles and Wells and Miles and Wells voluntarily agree, to pay a civil charge of \$9,500.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this order and shall note the Federal Identification Number for Miles and Wells. Payment shall be by check, certified check, money order, or cashiers check payable to "Treasurer of Virginia" and sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Miles and Wells, for good cause shown by Miles and Wells, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the NOV issued on September 24, 2003, as listed above in Section C. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, Miles and Wells admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Miles and Wells consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Miles and Wells declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as

a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by Miles and Wells to comply with any of the terms of this Order shall constitute a violation of an Order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Miles and Wells shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Miles and Wells shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Miles and Wells shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Miles and Wells. Notwithstanding the foregoing, Miles and Wells agrees to be bound by any compliance date which precedes the effective date of this Order.

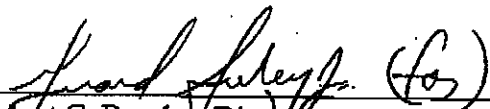
11. This Order shall continue in effect until:

- a. Miles and Wells petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- b. The Director or Board terminates the Order in his or its sole discretion upon 30 days notice to Miles and Wells.

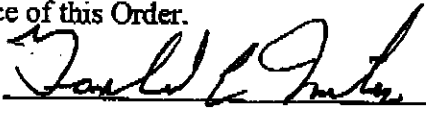
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Miles and Wells from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Miles and Wells voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of December 3, 2004.


Robert G. Burnley, Director
Department of Environmental Quality

Miles and Wells voluntarily agrees to the issuance of this Order.

By: 
Date: 10-12-04

Commonwealth of Virginia

City/County of Chesterfield

The foregoing document was signed and acknowledged before me this 12th day of
October, 2004, by G E Miles who is
(name)
Partner of Miles and Wells, on behalf of Miles and Wells.
(title)

Sue T. Lipscomb
Notary Public

My commission expires: Dec 31, 2004

APPENDIX A

Miles and Wells shall:

1. **By no later than December 10, 2004**, submit to DEQ-PRO, documentation that the Army Corps of Engineers has debited the purchase of 3.72 acres of mitigation credits from the Mitigation Bank ledger at an approved wetland mitigation bank.
2. Pursuant to this Order, submit all documentation required by this Consent Special Order to:

Cynthia Akers
Department of Environmental Quality
Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060